IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5093 of 2001

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAMODBHAI SANKARBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR BS PATEL for Petitioner No. 1

MRS RANJAN B PATEL for Petitioner No. 1

MS NANDINI JOSHI A.G.P. for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 04/10/2004

ORAL JUDGEMENT

1. RULE. Ms. Nandini Joshi learned A.G.P. waives service of rule on behalf of the respondents. With the consent of the parties the matter is taken up for final hearing today.

2. The petitioner has by way of this petition challenged the impugned order dated 28th September, 2000 passed in Revision Application No. 1 of 1999, whereby respondent no. 1 while exercising power under the Saurashtra Trees Felling (Infliction of Punishment) Act, confirmed the order dated 30th December, 1997 passed by the respondent no. 2 in appeal no. 1 of 1996

3. I have heard the learned advocates for the respective parties and have perused the relevant record. From the order it appears, that the appeal was heard before the Appellate Authority (Deputy Collector) exparte and the proceedings were conducted in absence of the petitioner.

4. Looking to the peculiar facts and circumstances of the case and since it is pertaining to penalty against petitioner, the Appellate Authority ought to have given reasonable opportunity to the petitioner before deciding the matter. Hence, it would be appropriate to direct the petitioner to approach before the Appellate Authority so that the authority can consider the matter afresh after hearing the petitioner.

5. Under the circumstances, both the orders i.e. orders dated 28th September 2000 and 30th December 1997 are quashed and set aside. The petitioner shall approach the Deputy Collector on 25th October 2004 and the Appellate Authority shall fix the date of hearing according to the convenience of the authority. The matter shall be heard and disposed of thereafter within a period of three months from the date the petitioner approaches the Appellate Authority. However, it is made clear that this Court has not entered into the merits of the case and the Appellate Authority shall consider the same on merits without being influenced by the fact that both the orders are quashed and set aside and also without being influenced by the orders passed by the earlier officer. Further the petitioner shall co-operate with the authorities for hearing of the appeal.

6. With the above observations and directions, the petition stands disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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